

MINUTES
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, December 19, 2005, at 9:00 a.m.
SCOTT HART AUDITORIUM, 303 N. Roberts, Helena

PRESENT: Governor Brian Schweitzer, Attorney General Mike McGrath, Secretary of State Brad Johnson, State Auditor John Morrison, and Superintendent of Public Instruction Linda McCulloch

Motion was made by Ms. McCulloch to approve the minutes from the regularly scheduled meeting of the Board of Land Commissioners held November 21, 2005. Seconded by Mr. McGrath. Motion carried unanimously.

BUSINESS TO BE CONSIDERED

1205-2 FWP – MT AGRICULTURAL CENTER & MUSEUM TRANSFER

Jeff Hagener, Director, FWP, said we have three items to bring before you this morning. The first is the Montana Agricultural Center Museum transfer. In 1985 the legislature approved authority and the state purchased 3.69 acres of property in Fort Benton that has been used as the agricultural museum in Fort Benton for those 20 years. During that timeframe it has been the City of Fort Benton or the River and Plains Society that has operated the museum. Over the years it has been difficult trying to get the taxes and insurance taken care of because of the arrangements. We've gotten that cleared up and we felt the best way to deal with this, and the River and Plains Society and the City of Fort Benton approved, was through specific legislation passed in the last legislative session that allows for the transfer of this property to the City of Fort Benton for them to operate and make it more efficient and effective for them. Everything has been squared up. This has been approved by the Fish, Wildlife and Parks Commission for final approval on December 8, 2005, and we are now asking for the Board of Land Commissioners to approve the transfer. It does include a reversionary clause, if it does not continue to be used for the same purposes, then it would transfer back to the state.

Mr. Johnson said I am supportive of this but I am struck by the fact that on the one hand we apparently have the authority as a Board to cede state land to another governmental agency or entity, and on the other hand we apparently don't have the authority to waive fees for rights-of-way to other governmental authorities. I find that an interesting contrast.

Mr. McGrath said there is a specific statute that allows transfer of public lands, state lands, to other entities as long as they are used for public purposes. In many of these that we do, the argument is that the local entities we are transferring the land to is in a better position to manage those properties or maximize the value or the use of those lands. There is not a similar statute that I am aware of on waiver of fees.

Mr. Johnson said could legislation create that authority to waive fees to governmental entities?

Mr. McGrath said our trust responsibility is to maximize the value of our land. So the argument would be made if you are waiving fees you may not be doing that. It would depend on the individual circumstance.

Mary Sexton said this is not trust land that we are talking about here, this is other state land, and that is the primary difference.

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Motion was made by Mr. Johnson to approve the transfer the Montana Agricultural Center Museum property to the City of Fort Benton. Seconded by Mr. Morrison. Motion carried unanimously.

1205-3 FWP – DUHAME ACQUISITION

Mr. Hagener said this is an acquisition proposed by the Greenway Service District of Butte who applied to the Natural Resource Damage Program in order to acquire what is known as the Duhamé property. That property would then become part of our Fleecer Mountain Game Management Area. The Duhamé property fits in very closely with our Mount Haggin area and it makes good sense to make it a part of that. The Greenway Service District did apply to, and went through, the Natural Resource Damage Program. That was approved by the advisory council and then by the trustee council. On Friday, the Governor approved the acquisition as part of the Natural Resource Damage Program this year. It includes 1,745 acres and the grant also includes (out of that \$1.644 million) \$155,979 which is to cover costs of surveying, fencing, and weed control for five years. This does fit in very well with the project, it is not a cost to FWP, it is the Natural Resource Damage Program. It is significant wildlife habitat and it fits well within the context and the purpose of the resource damage and that part of it. We are asking for the Board's approval. There are ongoing negotiations about the actual total value. The Governor did approve, as the Natural Resource Trustee Council, the amount of money that was originally started for it and it would not exceed that and would have to be fair market value. There are still discussions about the access provisions which will hopefully be cleared up to make sure there is clear access to that property. We are asking for the Board's approval as has been approved by the Governor, the Natural Resource Damage Trustee Council, and the Fish, Wildlife and Parks Commission.

Motion was made by Mr. Morrison to approve the Duhamé acquisition. Seconded by Ms. McCulloch.

Mr. McGrath said the funds for acquisition of this property come from the Natural Resource Damage Program. These are funds the state has obtained in settlement with our lawsuit against ARCO for the clean up and restoration of the lands along Silver Bow Creek. This is an important part of that program, it has very strong support from people that live in that community. It provides substantial access for sportsmen and being adjacent to the Mt. Haggin Wildlife Management Area, it fits in very well with things FWP does.

Mr. Johnson said I gather we are comfortable with the potential resolution of these access questions that are pending?

Governor Schweitzer said yes. This isn't a final conclusion but there will likely be resolution of those access questions.

Mr. McGrath said the contingency the state has is that the trustee, which is the Governor, has approved acquisition of the property subject to obtaining access from an adjoining landowner to the satisfaction of FWP.

Governor Schweitzer said for those who haven't had the opportunity to follow up the Silver Bow Creek mitigation work that is going on, this is going to be one of the most remarkable reclamation projects in America. It started out where you couldn't drink the water and now it will be a great fishery in our lifetime. This is a great opportunity and it adds a great deal of value to the wildlife habitat that we already have in the area.

A vote was made on the motion. It carried unanimously.

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1205-4 FWP – SWAN VALLEY CONSERVATION PROJECT

Mr. Hagener said the Swan Valley Conservation Project is a more detailed project and will take more years. We are asking for approval to move forward. We have the money for the first phase, and we expect to get the money for the further phases down the road. This project encompasses approximately 10,880 acres in Lake County, with the lands that are generally checker boarded within the Swan River State Forest. The lands we are talking about are Plum Creek lands and we will get them either by acquisition or conservation easements. This first phase will be the conservation easement lands. The remainder of the Plum Creek lands would be in future phases of these exchanges. We do not have funding for them at the current time, but we are working to acquire them. We would acquire conservation easements on approximately 7,200 acres out of the total and we would acquire in fee title 3,680 acres of those properties. These properties all have outstanding riparian, wetland, and forest habitat. They support threatened and endangered species of grizzly bear, bull trout, wolf, lynx, and bald eagle along with cutthroat trout, moose, elk, deer and other wildlife. They provide significant public access throughout the area and recreation. They are also a working forest landscape which is one of the primary criteria of the Forest Legacy Program. Approximately \$27 - \$30 million is expected to be the total amount to complete this project. About 75% of that will be federal money from the Forest Legacy Fund. The other 25% will be matching private funds provided by non-profit land trusts, foundations, and individual donors. Federal funding sources will consist of the Forest Legacy Program. At the current time we have \$8.7 million allocated with another \$6.2 million requested right now in the process. Other natural resource grants likely to play into this are the US Fish and Wildlife Service Habitat Conservation Program and the Bonneville Power Administration Fisheries Mitigation, private matching funds of over \$2 million have already been committed to date by the Trust for Public Lands. The first phase of this, what we are hoping to complete in January 2006, would be the FWP will acquire 6,083 acres of conservation easement, and that property would go for about \$7,900,000. Phase II we are hoping to complete by December 2006. This would be the acquisition of additional 1,121 acres of conservation easement. Phase III would be for the final 3,600 acres with the total estimated value coming up to \$27 - \$30 million. Some of the details are that those properties are within the state forest, particularly the lands that are acquired by acquisition, we would likely transfer those properties to DNRC in the future with the conservation provisions on those properties. This got a very high rating from the Forest Legacy Program was because of its wildlife values, but the Forest Legacy Program does require a continued forest management effort. We think DNRC is probably the more appropriate entity to manage those from the forest standpoint. We would still hold the conservation easement. It is a fairly detailed project.

Mr. McGrath said what exactly is the Board being asked to do?

Ms. Sexton said approval from the Board for the expenditure of the funds, most of them federal funds, to purchase the conservation easement and the fee title lands through the Forest Legacy Program. This has been an ongoing effort with the Trust for Public Lands and others for a number of years and we are reaching a window of opportunity where we need to close some of these deals in order to continue the funding process. Most of this is Forest Legacy Program funding.

Mr. Johnson said on those parcels where we are purchasing a conservation easement is access part and parcel of that arrangement?

Ms. Sexton said I am not familiar with that. I believe there will be access continued on the conservation easement. It is a roaded area and certainly if those parcels come to DNRC, the access would be there. The conservation easement Plum Creek is continuing to manage for timberland although they are

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governed by the conservation easement. The fee title lands, if DNRC gains the management, will be managed along with the rest of the Swan State Forest for timber production.

Ms. McCulloch moved approval of the Swan Valley Conservation Project. Seconded by Mr. Morrison. Motion carried unanimously.

1205-5 PRELIMINARY APPROVAL FOR THE DNRC/CB RANCH LAND EXCHANGE

Ms. Sexton said this is a request for preliminary approval for the DNRC/CB Ranch exchange. We are requesting preliminary approval from the Board to proceed further with the valuation of a proposed exchange between the CB Ranch and the State of Montana. Approximately 1,280 acres will be acquired from the CB Ranch in exchange for approximately 640 acres. This is a part of a process that has been going on for a number of years, a good portion of this land we are exchanging into once belonged to Darby Lumber Company. There was some money available and part of that property was purchased by the Forest Service, the rest of the property was purchased by the CB Ranch.

Candace Duran, DNRC Real Estate Section Supervisor, said we're going to be trading out of Section 36 and in exchange we will be picking up Sections 1 and 25. For your information, it will impact a later land exchange issue, the land is near the Sula State Forest. The checkerboard land was formerly the Darby Lumber Company land and will be picked up by the Forest Service. At the end, we will have blocked up trust land with the Sula State Forest. We are essentially getting two for one.

Ms. Sexton said the parcel we are trading out of is primarily inaccessible, it is very steep and the timber values are minimal. The properties we are picking up, although they have been logged, are flatter and are in a more moist environment and the timber production capability would be much higher. There would be increased access with the two sections that would be added. The public comment thus far has been supportive with the exception of two landowners who border on that state piece of trust land we will be trading out of. Because they do have sole access, they are concerned if it goes into private ownership they won't have access to the state land anymore. But it does not have public access at this point. We are asking for preliminary approval today, then we will go into negotiations, the MEPA process, have the formal appraisals done, etc. At this point in time the values, the estimates of value for this, is approximately \$1,024,000, about \$1,000 per acre in that range, and our section would be perhaps \$640,000 and then we exchange the other two so it is \$1,024,000.

Motion was made by Mr. McGrath to grant preliminary approval to proceed with the valuation. Seconded by Mr. Morrison.

Governor Schweitzer said we are valuing all this land around \$1,000 per acre so we are not actually trading two for one. We are getting \$600,000 and we are expending somewhere close to twice that much.

Ms. Sexton said the other way around. We are gaining an extra section of land. We are selling the one 640 section and we are gaining two sections. It will block up with other isolated sections we already have. They do have public access, it is heavily roaded, it has been burned and it has been logged over the last few years.

Mr. Morrison said is Section 36 currently agricultural use? Grazing?

Ms. Sexton said very little grazing. There was some Christmas tree production in the 1950's. There is a grazing lease on it but it is very minimal, it is 30 AUM.

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Mr. Morrison said it is three miles from Darby?

Ms. Sexton said yes.

Mr. Morrison said it probably has residential development potential?

Ms. Sexton said it is quite steep.

A vote was taken on the motion. Motion carried unanimously.

1205-6 FINAL APPROVAL OF DNRC/MILLER LAND EXCHANGE

Ms. Sexton said in an effort to clarify the factual part of this exchange, I put together a fact sheet for the Board. There is a write up and comparison in the Board's packet and the fact sheet has the pertinent information involved with this exchange. To begin, this is an exchange that has been proposed 3-4 years ago and actually the initial stage of the negotiation occurred in the previous administration. From this, some policies have changed in the middle of this exchange. We have learned a good deal from this but we are looking at the old and the new and from the standpoint that some of the negotiation occurred in the previous administration. The Sula land, which is 800 acres in the Sula State Forest, has five parcels involved with this exchange – approximately 500 acres of timber land and 300 acres of grassland. Some of this did burn in the fires of 2000. The proposal here has been given preliminary approval by the Board in April 2005, and is to exchange these 800 acres for 1,458 acres in the Lincoln area, north of Lincoln. This is some the old Plum Creek land. The 1,458 acres consist of about 1,400 acres of timberland and 58 acres of grassland, which has been harvested recently but still has continuing timber potential. Land values are the next issue. An initial appraisal was done on this property in October 2004, before the Board adopted the policy in December 2004 that appraisals are to be done both with existing access and with hypothetical best access. This proposal came in mid-stream of some changes by the Board. Under the Stuckey appraisal the original appraisal was assuming DNRC access. It was a very circuitous route, coming in over Rye Creek, 2% saddle, and then down and over through Shining Mountain Ranch, which is the Miller property. We do have legal access. That original appraisal was for \$1,331 per acre and that is with excess timber values. At that time, Stuckey was asked to do a hypothetical value of what it might be if we had the best, most beneficial, all purpose, all legal access and that would be through the Shining Mountain Ranch. That would be at \$3,700 per acre. Again, that was done in October 2004. This is hypothetical access, access that we do not have. After preliminary approval by the Board, there were a number of questions raised regarding the appraisal. Given the number of questions, DNRC contracted with its funding to have another appraisal done asking for the highest and best use with hypothetical best all purpose access to all of the parcels through the Shining Mountain Ranch. This is not access we have and as a matter of fact, if the exchange takes place neither will the current landowner. There is a current easement on this property which does not allow roads to be built all over, there are limitations as to where roads can be built. Due to the easement the present landowner would not even have all access to these parcels. So you can see the different values that are there. There was a factor in the Bitterroot Valley that land values are escalating. Land values are also escalating in Lincoln. I believe the value between 2004 and the 2005 is about 14%. We looked at the Lincoln land and what we have was the October 2004 appraisal at \$1,360 per acre, we would assume a 10% increase in the value of that because in Lincoln land prices are increasing. After preliminary approval in April 2005, we had a second appraisal done. We went back to the Miller representatives and said there is a big difference here. We know we don't have access across the Shining Mountain Ranch but we wanted to get the best deal for the state and the appraisal shows with access this could be the value of the land, we needed to see if we could further

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negotiate this deal. And we did. We have an additional \$160,000 added to this proposal as a donation with which we will buy another 160 acres in Lincoln. So the estimated exchange value is \$2,925 per acre. The Wetzsteon property comparable piece of land in the area is a piece of property that has been on the market in the Bitterroot since August and it is 367 acres plus or minus, and the asking price is \$799,000 or approximately \$2,100 per acre. I received an e-mail from Steve Benedict who is from the Bitterroot and I believe he has the property listed. He said he has a contract now for \$2,300 per acre. This is property adjacent to our property, it has access similar to our property and it has been on the market for over four months and not sold for \$2,100 per acre, it may have a contract on it for \$2,300 per acre. We are getting \$2,900 per acre, right next door. That is a real world comparable in this exchange issue. If you look at future revenues, and this is an important criteria for the state when it does exchanges, what is the revenue potential? Currently we are getting about \$800 per year on the Sula property for grazing. There is some potential for timber left, but not a great deal. It is primarily 300 acres of grassland, 500 acres of timber. We are currently getting \$100 per year on it. In doing the revenue estimate on the two properties, given the timber values and grazing values, at the end of 80 years as you can see we would double the revenue to the trust with the Lincoln property. So there is definite increase in revenue to the trust. Would we do something else with the Sula land? I know MonTRUST suggested we condemn access and subdivide it. I think the chances of us doing that are fairly minimal, but that is the highest and best use. Again, there are conservation easements. The Miller property has an existing conservation easement which restricts building and road construction. They signed an option for a conservation easement on this land which would extend the easement to the state land and would limit building and future development on this property, as well as road building. I want to add the additional mitigation came in as part of the scoping process, we've gone through the MEPA process, held hearings in both Ravalli County and in the Lincoln area. The current owner, Mr. Miller, has agreed to restrict grazing of domestic sheep in the Miller property. There was an issue some years ago with pulmonary disease in wild sheep herds because of the interaction with domestic sheep. So Mr. Miller has agreed to restrict, with a deed restriction, grazing of domestic sheep on his property in perpetuity. I would add we do gain access to our timber land through the Miller property for our Sula State Forest so when we market timber we have better access to that timber. This has been controversial and there are a lot of folks here to speak to this issue.

Public comment began with proponents.

Ed Tinsley, Lewis and Clark County Commission Chair, said there were numerous public meetings in the Lincoln area, the community whole heartedly supports this proposal. The State of Montana and the people of Montana will benefit greatly from this exchange, we are getting almost 1,500 acres for 800 acres. That is a tremendous new asset to the trust. A key portion of the snowmobile and dog sled trail between Lincoln and Seeley Lake over Huckleberry Pass is going to be protected now. We will have access to that, particularly for snowmobilers in Lincoln because that is a huge part of the economic well being of that community. Finally the residents want to maintain their traditional use of the lands in the area, hunting, wood gathering, etc. We got this commission together 3-0 and we stand together on this, we appreciate your support.

Hank Goetz, Blackfoot Challenge, said we have partnered with the Nature Conservancy to purchase up to 88,000 acres of Plum Creek timberland in the valley and then dispose of it according to a community-based plan. As Commissioner Tinsley said we have held over twelve meetings throughout the valley, three specifically in Lincoln. The folks there without exception approved the DNRC getting this land. They are very comfortable with DNRC ownership and I think the specific advantages Commissioner Tinsley mentioned are the most important.

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Bruce Bugbee, representing Miller Ranches, said we appreciate the hard work that has gone into this. We have been working with the staff of the DNRC for several years and have focused specifically in meeting or exceeding all of the criteria both before and after changes made, and it has been a challenging process. We believe we have put together a package with the assistance of the staff to meet or exceed every one of the criteria for the school trust lands. As well, we have made every effort we can reasonably make to meet or exceed public concerns. We sought out comment early and with some frequency to address other public concerns. We believe we have done that too. Not everyone is satisfied but we think we have a pretty good package.

Bob Bushnell, Ponderosa Snow Warriors Trail Committee Chair, said we use this area primarily for a safety issue, otherwise the snowmobiles have to get right out on the highway to get from Lincoln Gulch over to our groomed trail system that is on the map. It is very important for us.

Jim Paris, Montana Snowmobile Association, said over the past two years Montana Snowmobile Association and the Montana Wilderness Society have negotiated a winter use plan for the Lincoln Ranger District which does include Lincoln and the land in this proposed exchange. The exchange is vital to this agreement and to snowmobiling in particular, and I would say this is a major multi-use area, its not just snowmobiling. It is used by dog sleds, cross country skiers, and used by ATVs in the summertime. So along with its other economic values it is a major year round recreational area. As was pointed out, recreation is a vital part of the economy of Lincoln. I would encourage your support for this.

Comments from opponents.

Senator Rick Laible, Montana Legislator, said I am not quite sure if I am an opponent or a proponent. I am not trying to dissuade the body from approving the land exchange. My concern is I don't think the state is getting the appropriate value for the land. The original appraisal came in somewhere around \$1,300 per acre, the last appraisal came in at \$4,331 per acre. The paperwork from DNRC says "we appraised the parcels with the hypothetical condition that they all have lawful purposes including public access through the Miller Ranch." If Mr. Miller gets the property he has legal access to that. So that property is worth \$4,331 per acre for him. He already has plans to build on that new property, his plans are to put a new cabin on that land. In looking at this, everything I see and everything I know about Ravalli County land is appreciating tremendously. This piece of property is a key piece of property for our valley and for the state. I believe the State of Montana is not getting a fair value. I am not trying to dissuade the Board from not going ahead with the deal, I just believe some additional contribution should be forthcoming from Mr. Miller. The original proposal that was presented as part of the public document was for 1,850 acres. If we stayed with the 1,850 acres plus a small contribution I think the deal would be fair. Then the Lincoln area could have the access they need, we would have more public land up there as opposed to less than what we would have and I think the state would get a fair value for it. If we go back to the original 1,850 acres which was proposed by Mr. Miller plus an additional contribution of \$689,000 that would make the deal fair. If you just look at the paperwork submitted by the Director, right now the Lincoln property is \$1,982,500 and you subtract that from the value of the Sula land including the donation, you come up with \$357,500 that you're still short. So it still doesn't balance out. Even though we've got different numbers we're not getting those numbers. I would suggest before we approve this, we postpone for 30 days so at the next meeting we can actually look at more comprehensive information on the land values. Because once this land has been traded, its gone. I don't have a problem with the land swap, we just need to make sure the state is getting the appropriate value for the property.

Roger Bergmeier, MonTRUST, said the question came up, is this land suitable for development and the Director said this is very steep land. The difference here is in the French Basin this is not steep land and

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it is very suitable for development and it does have an extremely high value compared to what we've been talking about today. It is very easy to select appraisals from other lands and the one we looked at was \$2,100 but there are also land sales in that area in the neighborhood worth \$14,000 or \$15,000 per acre for smaller tracts. So we shouldn't be looking at this strictly from the standpoint of grazing or forestry. There are some values there that aren't being recognized. We also have a problem when we are exchanging lands that are blocked up, like the lands in the French Basin and the Sula Forest, for blocking up scattered lands in the Lincoln area. There doesn't seem to be a way of determining what exactly is the value of blocking those lands especially when you are removing 800 acres of blocked land in the Sula State Forest. Another problem we have with this is in the Record of Decision there is no problem with threatened and endangered species. Well that is probably true, but the problem we have with it is the land you are going to get in the Lincoln area is in the grizzly bear recovery area. It may be impacted also by bull trout and a few other species like lynx. We don't have that problem in the French Basin with threatened and endangered species but you are possibly taking on a 1,360 acre management headache if you receive these properties in the Lincoln area. When the appraisals were done on the French Basin land there is a 37% discount taken off the appraisal because of the lack of access. When you do the math you multiply the \$1,606 difference times the number of acres and you come up with \$1,284,000, that's the difference in the land values based upon the lack of access. It seems to me we could buy a lot of access to develop land not only in the Bitterroot but in other areas as well for that price. One other question I have is it seems ironic that we are losing 800 acres of public access in the Bitterroot, the French Basin, in exchange for these lands in Lincoln and Mr. Miller is willing to give another \$160,000 to purchase more public access for more state lands in the Lincoln area. It seems to me if we are losing the 800 acres in the Bitterroot we ought to be buying some acreage in the Bitterroot instead. Last, I agree that we ought to be postponing this until we get some better information especially what we really could be planning for the land in the Bitterroot and considering the values for alternative uses. We are against this land exchange and we agree that it needs to have another look taken. Especially what is it going to cost? What it will cost to develop access there? And the threatened and endangered species problem you will get into.

Greg Chilcott, Ravalli County Commissioner Chair, said we stand opposed to this land exchange unanimously. The loss of 800 acres of public land in Ravalli County in the Sula Basin is unacceptable to us. It is prime hunting and elk habitat. We are not willing to sacrifice that for land in Lincoln. We think it is under-valued but that is not our concern. We are losing public lands for our citizens. We do have traditional use concerns. This has been traditional use, we have accessed it for years and generations. We hope that you will reconsider this exchange proposal and stand behind the citizens of Ravalli County.

Dale Burk, Ravalli County Fish and Wildlife Association, said we have been communicating with Mr. Bugbee but I have not yet heard nor read in the analysis what we feel is the most important single issue here. That is along this eastern section we are going to lose access to the one area where the elk migrate to in the Bitterroot. I brought with me statistics from the recent harvest from Fish, Wildlife and Parks. Some 14,275 elk hunters checked through the Darby check station of whom Fish and Wildlife estimate that 10,000 to 12,000 people use this land to access this elk herd this hunting season. Those are people who have bought a state permit, they have a vested interest in this, we have a history back for the entire period of use for this land and we will have that use into the future, that's a value. I think we can look at your million dollar exchange and \$3,000 per acre but I frankly believe this access is priceless. I don't believe there is any other way to access this state land. This state land is our ability to work an elk herd, to manage it, to hunt it, to be literally part of the process. We have no problem with the state doing whatever it wants to with the people in Lincoln, we actually support the people of Lincoln and what they are trying to do there. We believe this is the wrong piece of land to use to accomplish what they want at Lincoln. Fifteen thousand people lose access in the hunting season so they can enjoy better snowmobile access in Lincoln? At what point in the State of Montana did we develop public policy where we impose

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literally a victim circumstance on some people in another area and provide joy and snowmobiling pleasure for others? We have two other major concerns. The issue of endangered species was raised earlier. We believe that the documentation the department has given you on the projected income from the Lincoln lands is precarious at best and falsified in reality. One filing of an endangered species problem with critical grizzly bear habitat plus the fact there are two streams in that land that are spawning grounds for bull trout, we know what the impact of bull trout critical habitat in the face of logging and roading are. I don't believe they are going to be able to do the kind of logging on this state land they are claiming they can do. I don't believe that revenue will be there. I think that here where we have a vested value of people converting state access permits and hunting licenses and all that supports that provides a far greater economic value to the State of Montana than what we would do if you went ahead with this exchange.

David Harlacher, Ravalli County Fish and Wildlife Association, said I am here to speak in opposition to this land exchange. This is prime elk habitat, the herds that move into that area are a resource that is treasured by the hunters in Ravalli County. Without risking and losing something in Lincoln County I think this needs to be protected, it needs to stay the way it is without any loss of access for the elk hunters in Ravalli County.

Representative Gary MacLaren, Legislator, said as has been pointed out this is prime hunting ground. If you compare the elk harvest numbers from Area 270, which this property is in, to the harvest numbers from comparable areas in the state and try to get a dollar value there, you may be able to value the intrinsic value of this prime hunting land. If this land is traded it will take this prime land out of public use and deny it to hunters throughout Montana and particularly Ravalli County. I realize providing hunting grounds is not the primary function of this Board, that your charge is to maximize school trust land value. Perhaps if you could compare these harvest numbers to other numbers and find comparable land you can come up with a fair value. There are hunters who would kill to buy land at this price when it is this kind of prime land. I would encourage you to try and determine that value in order to maximize the value of this property.

Ken Hayes said he was opposed to the exchange because of the hunting. I don't think a lot of people realize again, how critical this east side is for game movement. With this trade it is going to put a barrier. I have hunted this area for almost 40 years. It is a big point.

Mark Lewing, retired Hamilton Unit Manager DNRC, said Senator Shockley asked me to show more about the access available at Sula. He displayed a map depicting the road access to the Sula State Forest and the 311 Road, a cost share road developed with the Forest Service for access to the forest. The salvage timber was logged utilizing the roads including the right-of-way from the Miller Ranch. We didn't have any problem getting that right-of-way. The 311 Road also accesses other areas too. The DNRC is proposing to keep the right-of-way. The public does not have access for hunting the state forest that is why the value is so low. If the exchanges go through, it will cut the forest in two and there will be no access. The other access is old logging roads, there are roads in the area installed years ago for logging. There are abandoned county roads going across the Boat Ranch, the owner tried to close them off and went to court over it. He was not allowed to close those roads. Senator Shockley is going to talk about the RS 2477 roads.

Senator Jim Shockley, Legislator, said the County Attorney said he is against this exchange. There is more access as Mr. Lewing mentioned. He referred to a RS 2477 road that was a federal statute that existed until 1972 and it was in existence from about 1866 that says, "if you have federal land and then get a patent from the government and were using the highway in a different manner, it is a public

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highway." Well my grandfather was the ranger at Sula in the teens and when I lived with Grandma she talked about the stagecoach and following it in a buggy. One of my cousins said the old wagon road went up through French Basin. I called Mr. Wetzsteon, the family is one of the first homesteaders, and the wagon road went up French Basin, it accesses this state land and it is a road that is open to the public forever and the only entity that can close it is the federal government. It went just north of the old existing ranch house. So this, in my opinion, makes the EA inadequate because not only do we have access Mr. Lewing referred to but we have this RS 2477 road to the Wetzsteon place. It is near there but not the same, the access is kind of rough there. As for Sheep, its not an issue. Mr. Miller isn't raising any sheep. But if he was to raise sheep on his own deeded acres now, it would impact those mountain sheep that come down. These strips aren't that wide. Mr. Miller's lodge is within about 50-75 yards of the state land. This is very valuable to Mr. Miller and we should bear that in mind. Mr. Miller has been very cooperative, the state has been very cooperative and this is all friendly disagreement. We've already touched on the fact that we may not be able to log what we get at Lincoln because of the grizzly bear and the Lynx habitat. So we trade this, manage it for years, and then the trust won't have the benefit of the bargain, in other words they won't be able to log it. Briefly, I am not good with figures, but when I got involved with this Mr. Liane took us on the tour. The original appraisal, done by Mr. Miller for \$1,100 and that didn't count about \$231 in timber, so let's call it \$1,300, I said this is no way anything in the Bitterroot is worth this little bit of money. The state said the access isn't good. I say you can parachute into it at \$1,300 an acre. So another appraisal was done with timber and it came in at \$4,300 per acre. When the value went from \$1,300 to \$4,300 I was happy. I assumed that we were going to get more land at Lincoln. The original deal I was told when I was on the tour, was 800 acres in French Basin for 1,458 acres in Lincoln. I assumed when the land value went up \$3,000 per acre we were going to get more land. We got the same amount of land plus \$160,000. That takes the land at Sula up to \$1,500. Fifteen hundred dollars from \$4300 is what we're losing. There is a figure here now at \$2,900 but this is a back end figure. Normally when the department has two appraisals they average them or back into them, but the original deal was \$1,300. After we proved the land was worth \$4,300, we are getting \$160,000 more which is another \$200 per acre. From a financial point of view this is just not there. But it is going to be a lot more anyway, it is \$4,300 to Mr. Miller because he has the access, he is the one buying it. But now we have access comparable to his and we can give that access to someone else. Furthermore, even if you came over Rye Creek, you can only do that eight months out of the year, but the folks that want to build on land like that aren't there in February and January. They want to be there for the hunting season and they want to be there in the summer. Its not enough money, there is more access than related in the EA and I'd appreciate it if you'd turn this down.

Ms. Sexton said we did do some research regarding historic roads and we have a survey taken in 1893 which shows the old stagecoach road that does not access these parcels. It does go to the Shining Mountain Ranch property but it does not access the parcels in this exchange. This is the oldest survey we have that would be utilized for the RS surveys.

Motion was made by Mr. McGrath to grant approval to the Miller Land Exchange. Seconded by Ms. McCulloch.

Mr. Johnson said I have some concerns based on the information we have heard today. I am not prepared in the face of that to oppose this exchange but I do think the Board has established precedent when its seen this kind of 11th hour questioning arise with regard to an item to grant the extension Senator Laible requested and I would ask that we do that. The shelf life of this land is substantial, it is not going anywhere by next month and if in fact some of these issues raised can be addressed in detail by the department between now and the next meeting, I would appreciate that. If we are going to err we ought to err on the side of caution in this regard.

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Mr. McGrath said one of the issues that the opponents brought up that does concern me as well is this east side public access. I don't know if Mr. Bugbee or somebody from the Miller's would try to address that. Would you address whether or not there will be public access on that east side, particularly around the Wetzsteon parcel?

Ms. Sexton said there is access through the Forest Service.

Tony Liane, DNRC Area Manager Southwest Office, said is there access going to be retained for public access through this strip? We have worked hard to try and retain access at that point. Mr. Miller said part of his desire is for some privacy and he is not willing to agree that he would allow public to continue using that strip. That does not deny access to any of this portion of the Sula State Forest. The access is from multiple directions: from the Forest Service, off the county road, through state and Forest Service land, coming off the East Fork Road, there are multiple ways the hunting public can get into this land for recreational purposes. Yes, it will be restricted and limited coming down along the Wetzsteon property but there is access through multiple points to get to that land.

Mr. McGrath asked has the state had any negotiations with the realtor, Steve Benedict, about the Wetzsteon property, I understand that is for sale, and whether or not it is under contract now?

Mr. Liane said we have not worked directly with the realtor on this after it came on the market. Prior to the lands in Lincoln being identified as potential trade or exchange parcels. Mr. Bugbee worked hard trying to acquire this property from Mr. Wetzsteon to be included in the exchange. This was back in 2000 or 2001. At that time they could not come to an agreement for Mr. Miller to acquire this ground. It would have then been a part of the exchange proposal. They looked at various other parcels throughout the Bitterroot Valley that would also work with the trust land parcels we have there to make a package we could bring to the Board. But they were unable to find other parcels that were for sale that we could put into an exchange package.

Ms. Sexton said I do have comments from Steve Benedict and he did note that this property is surrounded by Forest Service and state land. It is offered on the market now for \$2,200 per acre and they hope to raise this to \$2,600 per acre, although they are in negotiations for \$2,500 an acre on that 367 acres. He does note here it does have access, he said it does have great dedicated access off the Forest Service Road 311. This is referring to the Wetzsteon property.

Mr. Liane said the 311 Road cuts across through the state land through various gyrations and comes all the way out over to a point called Guiding Saddle that is accessed from the east fork of the Bitterroot. I might add that there are multiple ways that roads could be built into various portions of the Sula State Forest. The only legal access we have today is coming out of Rye Creek across the Forest Service land and into the state land at this side. All of our access and our harvesting is taking place on the portion of the Sula through road permits gained after the fires of 2000 from Mr. Miller and the Forest Service. Yes, we could most likely get access from the Forest Service and we could build new roads. I did some calculations and in order to bring a road up to standard for residential development on this property we are looking at 5-7 miles of reconstruction or construction of new road to access the property. From the highway at Rye Creek, it is about 14 miles. That is what the impact of access has been on the appraised values.

Mr. Morrison said what concerns me about this overall transaction is I have been sitting here for five years and we've had sixty Land Board meetings, we've reviewed hundreds of transactions and this is the

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first and only time I can remember when we had essentially the people of one county pitted against the people of another county on access. I wish that as we go forward we can look for opportunities to avoid that kind of situation. Having said that, my question is whether we have looked at other options for generating revenue to facilitate the Lincoln acquisition?

Ms. Sexton said for the Lincoln acquisition, other revenues instead of this exchange?

Mr. Morrison said yes.

Ms. Sexton said there are other exchanges we are looking at, other Lincoln properties. As you know, there is a good deal of Plum Creek property in the Lincoln area that is interspersed with school land, so we are looking at other exchange opportunities. So, yes, we have looked at others. This seemed to be a good fit particularly taking into consideration that for Ravalli County, this isn't the only exchange. We are looking at the CB Ranch exchange, and there is also in the making another Creech exchange. So if this is taken in isolation it may look like a loss for Ravalli County, however, even when you look at the Creech exchange where we are getting two sections of accessible property for one section of inaccessible property, that is a considerable net gain for Ravalli County. The Creech exchange we are looking at, which is not yet prepared for preliminary review, is in the northern part of the county which would also add more public access for Ravalli County. So, I think to look at these in isolation is to not look at the larger picture. The Lincoln area is one exchange where we are looking to block up some lands, there are other proposed exchanges out there to block up other parcels of land in the Lincoln area so we have a larger land base in that area and we will also have a larger land base in Ravalli County as well. I think there are other projects working through this and it will be a net gain for everyone.

Mr. Liane said I want to point out the land exchange we brought to you for preliminary approval, the CB Ranch exchange, is two parcels that will be traded out of the 800 acres in French Basin. The Creech exchange proposal is being worked on right now to try to formalize that and bring it to the Board. As Director Sexton mentioned, if these other exchanges are approved and the Miller exchange is approved, we will end up with a net increase in state land of about 40 acres, but we would have an increase of accessible state land in Ravalli County of about 1,500 acres. We feel that is a benefit to the citizens of Ravalli County.

Mr. Morrison said the department's point is that the Miller exchange needs to be viewed in context and that you are engaging in these other acquisitions with CB Ranch and Creech in the same context and the people of Ravalli County hopefully have overall a net gain in terms of access to lands in the Bitterroot.

Ms. Sexton said that's correct. We're taking a holistic view of this for the benefit of the state as well as for access and the people of Ravalli County.

Mr. Morrison said just so its clear, with respect to Miller, do we know if Mr. Miller intends to allow people who ask permission to hunt on his property?

Mr. Bugbee said in general no, he doesn't allow people on it.

Mr. Morrison said what we're talking about with respect to access here is really the access to the parcels we are letting go of, and right now there is no access to those over his ranch except with respect to the people who he may allow to do that. Right now they have to go through state land parcels to get to parcels 1 through 5. Is that right?

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Ms. Sexton said yes.

Mr. Johnson said I want to say I don't see there is any urgency with regard to making this decision. But my understanding of the discussion at this point is the value of this to us is the acquisition of these new parcels. Given the fact trading existing holdings has become as controversial as it has, I would think it might make sense for us to look at the acquisition of this new property as perhaps one of the first outcomes of the land banking program. We've provided tentative approval for the sale of substantial acreage, there will be substantial revenues generated by that sale, and that way we don't create the problems the folks from Ravalli County have spoken to and we still are able to acquire those new holdings under the umbrella of the program as it was designed. I'd like to see us discuss that and I would urge the Board to postpone action on this item.

Ms. McCulloch said I want to thank Senator Shockley for spending some time with my staff and brought up some good questions. Senator Shockly brought up some very good questions and being the person on the Board directly responsible for the 145,418 school children in Montana, my request of my staff person who attended the staff meeting was to make all of Mr. Shockly's points and ask all of his questions. I had to be comfortable with this going into the Land Board meeting. I know my staffer asked politely at the staff meeting and I am comfortable with this. Maybe not the pitting of the counties, but am comfortable with the value and the way things have been done. I think throughout the process things were quantified in a manner that made sense and that are justifiable. That's the reason I would be voting for this.

Governor Schweitzer said there seems to be more resistance to the east side than to the west side, given the questions about access. Is there any interest in pursuing a sale of the west side and not the east side?

Mr. Bugbee said no sir. The way we have wound up in this project we've stretched everything to the maximum to make it work and Mr. Miller feels this is it. This is his proposal. There is an interesting "Catch 22" at work here. When we do our best to meet the goals of the school trust, we end up then confirming questions of the other interests which I know is a chronic challenge for the Board. And when we talk about access on the east side for the public, not only do we feel stretched in total value but that takes it the other direction because public access then brings property values way down. So it is an even further challenge to meet that objective. The challenge of finding suitable exchange property in the county is a big one and we tried for a long time including going to the Fish, Wildlife and Parks and the Forest Service asking them is there some other way we could address successfully these public concerns in Ravalli County? And we were not able to find that.

Governor Schweitzer said I had a conversation with Director Sexton about the negotiation and I understand it has been a tough one. There have been some appraisals substantially higher and some have made the case that with the abundant access that will now be available the true value is more like \$4,331. I saw in the negotiation rather than increasing the value of the state land the individual, Mr. Miller, proposed he make a donation of \$160,000. Sometimes high net worth-high income individuals would like to make a single payment. So in this negotiation would it be possible that he would be interested in making a donation of some larger amount that would get closer to the \$4,331 as proposed by Senator Laible and others here?

Mr. Bugbee said the simple answer is no. We've gone as far as we are willing to go and the problem with this is we're talking about a hypothetical value not a real value. And hypothetically we talked about what if this property were in downtown Missoula or Helena? Just simply, the fact is it is not. We believe that we've done our best in good faith to meet the concerns of the state and the public.

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Mr. Liane said the value of \$4,300 that has been given to this based on the appraisal. Of course we talked about where the access is and it is at a ranch that we don't have, but that value assumes that we put this land to a different use. Subdividing and putting cabin sites on it or something to generate more income for the trust, or to really have the value the higher appraisal is associated with. On our tour with Senator Shockley and others when we asked if there would be any support from the public to gain the higher value as to access ground and put cabin sites on this to generate more income for the trust, with the exception of MonTRUST everyone said no, they did not want to see the land change from the current use. But changing that use is the argument why this land is worth more.

Governor Schweitzer said these high dollar pieces of land in Western Montana are undergoing some transformation in terms of how we value them, having had a great deal of experience in the Flathead as the value of these pieces of land have increased a substantial rate. Fifteen years ago, its true land was worth more money the smaller you could cut it into parcels. You could make a deal and could get a 160-acre piece of property and get it split into 50 separate smaller pieces of property and your end value was going to be much greater. But with the large number of high net worth individuals that are coming into Montana, oftentimes blocking up land and having a larger piece of property to surround a trophy home has become the antithesis of what we saw 15 years ago. These chunks of land that have been blocked up have significant value per acre by being blocked up in large areas. I have a concern. I just don't believe we are getting full value here and I don't have enough information other than what I have heard here today. There have been opponents and proponents but in my mind I haven't been able to fully get to the point where I think we are getting full value for this.

Mr. Johnson offered to make a substitute motion. He made the motion that the Board postpone taking action on this item until the next meeting. Seconded by Governor Schweitzer.

Mr. McGrath said this has been in the works for years, what is it we gain by postponing it for a month? What is it we're going to do? What is it we want the staff to do?

Mr. Johnson said hopefully a couple of things. This not the first time we've seen 11th hour commentary with regard to an issue we've reviewed preliminarily and then all of a sudden when we are going to take final action there are folks raising new questions. I'd like to see the department respond in detail to some of the things that have been raised today. I have a concern with regard to this question of potential threatened and endangered species habitat in the land we are going to acquire. How will that impact its value? It is not something we've discussed. I have had a sense that there is a tendency on the part of the department at times to undervalue some of our holdings. I agree that it is a different world today in terms of the value of these large tracts of lands when they are blocked and can create the kind of exclusive access that this would create for Mr. Miller. I think we need to revisit those issues.

Mr. Morrison said Mr. Bugbee do you think Mr. Miller would be amenable to some kind of provision regarding access to parcels 1 through 5? Not over his existing fee land but through the existing state land?

Mr. Bugbee said no sir.

Mr. Morrison said for recreationists? Recreationists accessing parcels 1 through 5 for elk hunting if they don't cross his existing ranch fee land but they cross the land to the outside of it?

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Mr. Bugbee said I think the problem with that is access is still access. It becomes a burden on the property legally, it becomes a burden on the value substantially, a value take down on that. It is just not going to work for Mr. Miller.

Mr. Morrison said it is your belief that Mr. Miller wants to keep that land essentially in the historical use. That he doesn't want to subdivide it and, if anything, probably wants to create a buffer for himself and let somebody else subdivide it?

Mr. Bugbee said that's absolutely correct.

Mr. Morrison said the conservation easement that is on it requires the historical use be maintained, right?

Mr. Bugbee that's correct and actually he has entered into an agreement with the Nature Conservancy subsequent to the valuation, committing himself to extending that easement over the 800 acres once acquired. That's voluntary and that's before any values were taken into consideration. He wanted to make it clear that is his ultimate intent. As well as to extend the covenant against sheep grazing, not just on the 800 acres, but on all of the property subject to the conservation easement now. That whole area will be prohibited from sheep grazing.

Mr. Morrison said the other question I have is with respect to the parcels in Lincoln the ones we are talking about acquiring. Are they currently publicly accessible so we are not picking up new access?

Ms. Sexton said they are currently because they are Plum Creek property and they've allowed access. If they went into private hands they could be lost.

Mr. Morrison said currently there is access? But if Plum Creek sold it away, there are not covenants that run with the land.

Ms. Sexton said yes. That's correct. Its actually the Nature Conservancy that owns it at this point and they are allowing access but if they were to sell to a private party access could be halted.

Mr. Morrison said Plum Creek or the Nature Conservancy?

Ms. Sexton said the Nature Conservancy purchased this as a part of a package deal from Plum Creek. There was a large purchase in the Blackfoot that occurred about a year and a half ago and this is part of that property. At this point in time, the Nature Conservancy does own this land and there is public access. If this deal does not go through and a private party purchases that land, then access could be lost to those lands. I would also add that these lands will be included under our Habitat Conservation Plan (HCP) so we will be protected from concerns of endangered species through our HCP.

Mr. Bugbee said actually Mr. Miller purchased these lands in order to make a viable exchange proposal so he is offering the exchange as an owner if these lands. He went out and bought them in advance as well as paid for all the costs of the transaction.

Ms. Sexton said that's true, he did purchase them from the Nature Conservancy with an opportunity to buy back should this not occur.

Mr. Morrison said but there is still access to those lands he purchased.

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Mr. Bugbee said he has continued the policy of allowing public access. But there is no public access as a matter of record.

Mr. McGrath said Mr. Bugbee would you have a concern if we postponed the final action on this matter for a month so we can get more information that some of the Board members would like to have?

Mr. Bugbee said if that's your desire, we're happy to work with you on that and provide any information we can. I think the issues that have been raised today are not new issues. We've dealt with them for at least the last two years, and what you have in the EA briefing is the response to those.

Ms. McCulloch said I have a question before having all these folks back again next month. I need to know what it is that is going to happen in the next 30 days? Is it more information to the Board or is it just requesting the department does something new? I am not clear. I need to know there is a reason.

Ms. Sexton said I'd like that from the department's standpoint. What specific information do you want? Secretary Johnson you mentioned threatened and endangered species. Are there other specific parts of information you want?

Mr. Johnson said Mr. Bugbee said this is not new information and perhaps it is not in the context of dialogue that has taken place. A lot of this is new information to me and I would like some time to digest some of this. Once we vote "yes" on this it is done, and if we've done that in error we can't fix it. I just believe if we are going to err we should err on the side of caution. This is serious business and I don't see why there is any sense of urgency. The land is going to be there in January.

Ms. McCulloch said that's fine with me, I just want to make sure that we're not expecting a new appraisal to be done between now and the next 30 days. I am fine with digesting and additional information and more time.

Mr. Johnson said I am certainly going to sit down with staff and look at the existing appraisal again and see if we really think there is reason to view those in a different context. I suspect maybe there is. The Governor's point is right, for years in this state there was a mindset that said if you can carve that into an acre lot that's a super deal. I don't know if that is the highest and best use for this anymore and some land that 20 years ago might have been \$2,500 ground, may well be \$4,000 ground today. I want some time to look at that.

Mr. Morrison said the Governor's concern was about value and he can work with the agency and satisfy that concern. My main concern here is about this sort of pitting counties against each other and I would ask that you redouble your efforts to explore if there is some way to work with Mr. Miller to mitigate the concerns of the people in the county with respect to access. Especially the east side parcels 4 and 5. I believe the beneficiaries of the school trust is the public of the State of Montana and merely maximizing revenue with every transaction is not our responsibility. That is one of our responsibilities. I think it is appropriate to look at the overall public impact of these transactions. And with respect to the access issues here, perhaps something of value can be obtained from Mr. Miller particularly on the east side here that can be compensated for elsewhere in the transaction.

Tom Schultz, DNRC Trust Land Management Division Administrator, said as the Director indicated previously, we have done our best to address these issues. These issues are ones we have negotiated. I don't think the department has any more influence in this process for getting a better deal on access, for getting a better deal on value. I would ask to save all of us from coming back next month, if the Board

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has an expectation we need to increase our value, we need to increase our access or there is no deal give us the cover to go and negotiate for you. Because right now for the Director and myself to go back to Mr. Miller-we've done what we can do. I don't think we can bring you a better deal. I can't do anything else. But if the Board were to set some clear expectation today saying we need more value to the tune of "ballpark something" or we want that access, we can negotiate these access issues. We would then have a stronger position to go back and Mr. Bugbee can tell Mr. Miller this is what the Board wants take it or leave it. Then we will know for next month. We may not even have a deal. We may not even be coming back next month, if we can't bring you a better deal it won't be on the agenda for next month. So if there are some clear expectations either on value or access let us know and we'll take that forward and do the best we can. But we need the cover of the Board on this politically, because for us to go as a department I don't think we have the same influence and ability to negotiate then if it came from the Board.

Ms. Sexton said I would add to that specifically what direction would you like to take? When I started out on this project it was \$2,300 per acre. That was the previous administration. They seemed to think that was a good deal. Before we brought it to you we brought it up to \$2,700 per acre. That passed preliminary review. We saw more information, we looked at more appraisals, we brought it up to \$2,900, almost \$3,000 an acre. I feel we have negotiated in good faith. We have looked at all options, we spent a good deal of time and effort on this. We've changed some of our procedures because I think previously the procedure was unclear. That was what Mr. Miller had to work with. It was not a clear process, who did the appraisal, how was it done, etc. and we've tried to improve upon this. We have raised the value on this. But I would also echo what Mr. Schultz said. I would like some clear direction from the Board as to what specifically you want because we do have a lot of information out there, a lot of time and effort put into this and I would like specific direction from the Board.

Mr. Johnson said I may very well be prepared to bring a specific alternate proposal to the Board but I am not prepared to do that sitting here today based on this new information that I've listened to. Again, I think it is a mistake to assign some tremendous urgency on this decision between now and next month.

Mr. McGrath said I for one feel comfortable it is in the interest of the trust and all of the people of Montana to go ahead with this proposal. But I do think if there are other significant questions Board members have and it is not going to create a problem for the negotiated deal, that we postpone it a month. I don't think that means to the staff that it is a rejection of this proposal at all. Obviously, it is a complicated transaction and people feel they want more information. I intend to renew my motion next month. I have spent a lot of time on this issue and I am comfortable that the values are appropriate and it is a good deal.

Governor Schweitzer said we have a substitute motion that would delay this decision until next month. I heard from Mr. Bugbee that they would be prepared to hold until next month for this decision. Governor Schweitzer called a vote on the substitute motion. Motion carried unanimously.

1205-7 DEPT. CORRECTIONS 351 TRANSFER TO JEFFERSON COUNTY

Ms. Sexton said this is the Department of Corrections 351 transfer of a parcel in Boulder, Montana, to Jefferson County. This is the transfer to a public entity that Secretary of State Johnson has referred to whereby it's a piece of property Corrections owns and they are transferring to Jefferson County.

Valerie Wilson, Dept. of Corrections staff attorney, said as the Board is aware the Department of Corrections owns about 1,050 acres of non-school trust land property in the Boulder Valley. About ten acres is being used as the Juvenile Corrections Facility and about 1,035 acres is being leased as crop and

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grazing lands. In October 2005, the Department of Corrections received a letter from the Jefferson County Commission requesting the DOC transfer approximately seven acres of the property that is currently being used for seasonal grazing to Jefferson County. Jefferson County's intent is to partner with a qualifying service organization, non-profit, to respond to a bid for DOC's Request for Proposal for a community corrections treatment center. The parcel that is requested in this transfer is outlined on your map. As you can see it is bordered to the southwest by Highway 69, bordered to the northwest by about twenty acres of campus that is currently owned by Jefferson County and leased by the Jefferson Local Development Corporation to Aspen Youth Alternatives Program. It is also bounded to the northeast by the Riverside Correctional Facility. DOC believes this proposed project fits the criteria of §77-2-351, MCA, provided the transfer is contingent upon Jefferson County partnering with an appropriate non-profit and successfully obtaining a bid for corrections for one of the RFPs for the community corrections program.

Tom Harrington, Jefferson Local Development Corporation, said the JLDC is a non-profit corporation assisting the leadership in Jefferson County with developing jobs and tax base. Jefferson County is in a unique situation in which we have three of the largest tax paying employers working in the extractive industry. These businesses mine the finite resource with definite operating periods. The challenge is in replacing these good employment opportunities and tax base and to sustain the current quality of life we have within Jefferson County. The continued development of our Boulder South Campus property allows us an opportunity to economically develop within the county. The activity we are looking at doing here is for a treatment facility and we feel this would actually help reduce some of the jobs we may potentially lose down the road with these extractive mines. It also fulfills the need of preparing us and offering an opportunity for a treatment facility that benefits the State of Montana. And I think this is a great opportunity for us to look at furthering our economy there and providing jobs.

Chuck Notbohm, Jefferson County Commissioner, said I am here in support of the project. I think it is a good use for the land and it definitely would be a "shot in the arm" for the economy for Boulder.

Charles Stepper, Jefferson County Planner, said we see a huge problem with drugs in our state and this would be an excellent opportunity where Jefferson County could partner with the State of Montana to solve some of our problems rather than locking our people up with no treatment whatsoever. I hope you support this effort. It would also increase the employment opportunities which at some time we know these mines are not going to be our greatest source of revenue and this is a good start in replacing those sources of revenue we are going to drastically need down the line.

Motion was made by Mr. Morrison to approve the transfer to Jefferson County. Seconded by Ms. McCulloch.

Governor Schweitzer said this is totally contingent upon getting approval of a treatment center. This transfer does not occur unless they are selected as the site?

Ms. Wilson replied yes.

A vote was taken on the motion. It carried unanimously.

1205-8 SET MINIMUM BID FOR LAND BANKING PARCEL #222

Mr. Schultz said this is setting a minimum bid for a land banking parcel in Madison Valley. We have previously come to you with an appraised value and talked to you about it.

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Candace Durran, DNRC Real Estate Management Bureau, said this parcel is located just outside Ennis in Madison County. It received preliminary approval and we went out and performed a cultural search. Two appraisals were also done on the property. We did one and the lessee who nominated the parcel did not like the value that came up so he had an appraiser do another one. The two appraisals were within 9% of the original appraisal, now they are within 5% of each other. We anticipate that this is going to go to auction and because of the location we plan to do a national advertising campaign. The minimum bid is \$1,850 per acre and we anticipate at auction we will get more. This is an isolated parcel and that is an issue. The access on this would not be too difficult for someone to overcome. That will affect the value but we expect we will have more than one person bidding on this, and that is the reason for going with the \$1,850 per acre.

Bruce Burger, Alton Ranch, said I just wanted to briefly thank you for your time and wanted to indicate our thanks to the department for their hard work. This is a lessee-nominated parcel and seems to be one of the first lessee-nominated coming through the process. If you choose to approve this agenda item we understand the lessee will be asked to submit earnest money and sign a purchase agreement on this parcel within 30 days and we are wondering if that agreement also includes a date certain for an auction or if the auction can be scheduled or rescheduled at some point in the future at the discretion of the department. It is just a point of procedure. It is a new program and things are evolving as it transpires and we thought that was something that could be more specifically addressed so lessees know what they are going to be faced with if these are approved.

Ms. Durran said I had this conversation with Mr. Alton and because this is a new program nothing is cast in concrete at this point outside of the rules which don't specifically address this. You have a specific time period you market a parcel of ground. Land in the Madison is selling between six months and a year, that is the market time. If we go with standard market time, we will just pick a date and set the auction. I would imagine in the future there may be some flexibility in terms of if we set an auction date and no one is there, we will move it down the road to a later date. In this case, Mr. Alton has indicated he is willing to purchase the property for \$1,850 per acre at a minimum. He will be one person at the auction and I am confident there will be more. We will probably be able to set that date and stick to that date in terms of the auction period.

Mr. McGrath said as I understand where we are, we've done preliminary approval, we've got appraisals, and we are now being asked to set a minimum and what we're doing is saying we will indeed sell this parcel to the highest bidder if it exceeds \$1,850. Is that correct?

Ms. Durran said what we're saying is we will sell this parcel for \$1,850 per acre if there is only one bidder.

Mr. McGrath said the point is this is the final decision the Board is going to make.

Ms. Sexton said you will see this one more time. You will have to approve it finally once it goes to auction. There will be final approval on this. This is only the second time of three times you will be addressing this parcel.

Mr. Morrison said we're just setting parameters for the auction.

Ms. Durran said we are just setting the minimum bid. What we'll do is start advertising the property, send an earnest money letter to the lessee and the agreement so they can sign it and are locked into this in

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terms of the marketing. Then we will market this property nationwide, we will go to auction. Once the auction is completed we will bring this back to the Land Board for final approval.

Motion was made by Mr. Morrison to approve the minimum bid of \$1,850 an acre for parcel #222. Seconded by Mr. McGrath.

Mr. McGrath said I want to make sure we all understand the process. A person who comes to the auction or the Alton Ranch folks understand there is still one more process, it is subject to final Board approval. I assume all the documents make that clear so there is no question about that.

Ms. Durran said the handbook we put together for the public has a timeline, a sequence of events. And the rules are available on the internet, the handbook is available to everyone, and that procedure is spelled out so people do understand that even though the Board gives approval today, there is still a chance down the road when the auction is completed, the Board needs to give final approval. And if that doesn't happen, the sale doesn't go through.

Governor Schweitzer said I really don't like the trading down process. DNRC makes an appraisal and somebody doesn't like that appraisal and they hire their own person. They come back with an appraisal that is less and we are expected to split the difference. We had one of these come before the Board last month and I believe we said we've got an appraisal and this is not the time for negotiation. Apparently some of these appraisals are used for exactly that. The last discussion we had I had concerns that we want to make sure we get enough money for this, I want to make sure if there is an auction and only one shows up that we get a good bid on this. Our staff thinks we will have a number of bids, I'd like to see us stick to our guns and stay at that \$2,019. If it goes above that, fine. If we get no bids we will have an opportunity for it to come back to us. We did that last month or the month before with one of these folks who brought a proposal before us and bid it down with their own appraisal and to be consistent I'd like to see us stick at that \$2,019 and go forward.

Ms. Durran said in conversation with the lessee, if the lower appraised value is not used the lessee said he would pull the nomination. He has the ability as the lessee to do that. He would just pull the nomination and take it off the market.

Mr. Johnson said as a follow up question to that, does that mean that same parcel can't become nominated by the department if we think it is suitable for sale?

Ms. Durran said the department can nominate parcels, however, it was the opinion during a discussion at the department that if we brought a parcel to the Board and the lessee objected to the nomination of the parcel, it might be difficult to get to the Board.

Mr. Johnson said in general, I don't appreciate ultimatums but what are we out of pocket, bottom-line, risking if we go to bid at \$2019 and we don't get that minimum bid? What does that cost us bottom-line?

Ms. Duran said we did the appraisal in-house, we did the cultural resource survey in-house, so outside of the department costs, we are not out anything. The ones that we are more sure of getting are the lower value parcels, we've paid for a cultural survey, we've paid for appraisals on these. But on these higher value parcels there was some question about whether they would be coming to market so we kept our costs down by doing everything in-house.

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Mr. Johnson said I have the utmost confidence in the department to be able to perform appraisals in a competent manner and I concur with the Governor in that this is probably where we need to be, the original number.

Mr. McGrath said I am alright with this because it is a minimum bid and its what the lessee proposed. That doesn't mean we have to take it and in fact I doubt if I would vote for sale of this property at \$1,850 given we have a higher appraisal. So I don't see this as a problem. All we are doing is getting the process started, we are not making any final commitments. It is the minimum bid. We are not saying we are going to sell it. One of the reasons I asked all these questions is to make it clear that if, in fact, we are not comfortable with that given we have a higher appraisal, we don't have to sell it.

Mr. Morrison said I agree with the Attorney General and we ought to see what happens here.

Mr. Johnson said is there an issue of good faith here if we establish a minimum bid that we know we are not going to accept if that is the only bid? I am not sure it puts the state in a good light.

Mr. McGrath said it doesn't because it is the proposal the lessee brought to us. It is a minimum bid. But I don't personally feel comfortable with accepting a sale at that price.

Governor Schweitzer said how is the bid process set? Is it set on a day like we do on the oil and gas lease sales?

Ms. Sexton said that's correct. The time is in the advertising and it will be set up in the press releases we do. It will be well advertised and folks will know this is the date for the auction. Once it is over, it is much like the oil and gas leases, it will be brought back to the Board for approval.

Governor Schweitzer said if it comes back here and we don't get the \$2,019 we can look at it then. At least we will get the bid process started.

A vote was taken on the motion. Motion carried 4-1. Mr. Johnson dissenting.

1205-9 SET MINIMUM BID FOR LAND BANKING PARCEL #117

Ms. Sexton said this is another setting of a minimum bid for parcel #117. The Board approved the county road accessible parcel #117. This is near the Blackfoot River. It will be advertised again within Montana to select a national market. By setting the minimum bid for the parcel the Board is allowing DNRC to notify the lessee and any other surrounding landowners that the parcel will be offered for sale at the minimum bid amount. This was department-nominated. The recommended value, the appraised value, was \$4,100 per acre. There is excess timber value in this piece. It is not a lot but there is some, about \$1,200 per acre. The recommended bid is \$5,300 per acre. We ask the Board to set this as a minimum bid for this parcel.

Motion was made by Mr. Johnson to approve the minimum bid of \$5,300. Seconded by Mr. McGrath. Motion carried unanimously.

1205-10 OIL AND GAS LEASE SALE APPROVAL

Ms. Sexton said we held our oil and gas lease sale on December 6, 2005, in the Department of Transportation building. Three hundred eight tracts were offered for lease. All were leased for a total of

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\$2,157,446.11, and the average bid per acre was \$17.78. This was not our top sale, but it was close. It certainly was the longest, it went until 2:00 p.m. The high competitive bid was in Richland County for \$301.00 per acre. I request the Board approve the issuances of these leases from the December 6, 2005, sale. I want to thank the Minerals Management Bureau staff for all the time and work they have put into these sales because they certainly have become popular.

Governor Schweitzer said these are all with the minimum of 1/6 as opposed to 1/8?

Ms. Sexton said absolutely. This is under the new royalty rate.

Governor Schweitzer said only a few months ago I heard potentially the world could end if we increased to 1/6 and it turns out we've attracted new bidders and higher numbers.

Motion was made by Ms. McCulloch to approve the oil and gas lease sale. Seconded by Mr. Johnson. Motion carried unanimously.

1205-11 FREEZEOUT TIMBER SALE

Ms. Sexton said this proposed timber salvage sale is located about 40 miles west of Missoula, part of the I-90 fires. We are trying to get this out as quickly as possible because of the salvage nature of this sale. The value is about \$45,000, the sale total is 58 acres, it will be 100% tractor. The only public comment received is regarding the Mullen Trail, a historic trail. There will be mitigation for this with the help of the public and the Mineral County Historical Society so vestiges of the trail are not disturbed through this salvage logging sale. We ask approval of this sale.

Motion was made by Mr. Johnson to approve the proposed salvage timber sale. Seconded by Mr. McGrath. Motion carried unanimously.

Ms. McCulloch said I want folks to note how quickly we have timber sales going from land that was just burned in the middle of August this year.

1205-12 RIGHTS-OF-WAY APPLICATIONS

Ms. Sexton said there are fifty-one requests for right-of-way application this month. There are historic county roads in Broadwater County, some historic telephone lines, electric lines, and new installation and the only one I would bring to you that is somewhat unusual is the Flathead School District. When they got the original easement from us for the high school they found they needed to add to that a 100 foot access road and buried utilities. This is about 3.93 acres and the compensation will be at fair market value, \$39,300. This is amending an application they previously had for their easement. This month we have #12537 from the Flathead School District for public school buildings and associated facilities, including a 60-foot access road and buried utilities; #12826 through 12836 from Sheridan Electric Cooperative, Inc, for overhead electric distribution lines; #12981 through 12985, #13006 through 13009, #13014 through 13020, and #13104 from Sun River Electric Cooperative, Inc., for overhead electric distribution lines; #13269 , 13271, 13273, 13275, 13277 from 3 Rivers Communications for buried communication cables; #13321 and 13322, 13325, 13327 through 13333 from Marias River Electric Cooperative, Inc., for overhead electric distribution lines; #13359 through 13363 from Triangle Telephone Cooperative, Inc., for buried communication distribution cables; #13617 from Northern Telephone Cooperative, Inc., for buried telecommunications cable; #13616 from Broadwater County for a

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public county road known as Wheatland Road; and #13629 from Mid-Rivers Telephone Cooperative, Inc., for a buried telecommunication line.

Motion was made by Mr. Morrison to approve the rights-of-way applications. Seconded by Mr. McGrath. Motion carried unanimously.

INFORMATION ITEMS

1205-13 YEAR IN REVIEW PRESENTATION BY TOM SCHULTZ, ADMINISTRATOR,
TLMD and PRESENTATION OF 2005 REVENUE CHECK TO SUPERINTENDENT
OF PUBLIC INSTRUCTION

Mr. Schultz said this is really a "thank you" to the employees of DNRC as well as the actions the Land Board has taken. We try to go over the things we've done on the ground and give an idea of the work we have accomplished as well as some picture of prices and the revenue generated and the good stewardship work we do on the ground. We will talk about the overview, history of trust land management, the four bureaus, and there will be a time for questions. As part of this presentation we will provide you with a variety of statistics concerning land management revenue pertaining to Montana state trust lands. Numbers can be cold and impersonal. The accomplishments of these DNRC employees are anything but impersonal. So today instead of focusing solely on facts and figures I will tell you our story over the last 12 months.

We have about 130 people on staff now who have diligently served the State of Montana by working in excess of 260,000 hours this past year to accomplish a rigorous set of objectives. You have one of the most highly dedicated and proficient work forces in the country. The readiness level of your land stewards including land use specialists, foresters, biologists, hydrologists, planners, legal counsel, economists, administrative staff, etc. is unparalleled in any other state within the federal agencies we manage alongside. These employees take their jobs seriously and are deeply committed to upholding their trust and stewardship responsibilities. Our employees are well respected and represent the state and department well within Montana communities and at the national level. Within the division we manage lands with an eye to being a good neighbor toward other landowners.

The Enabling Act and the Montana Constitution holds the language that gets us going, it talks about the stewardship and trust responsibilities. Article X of the Montana Constitution spells out who sits on the Board of Land Commissioners. There has been a lot of discussion in the legislature but we do have a Constitutionally-mandated Board that has the responsibility and privilege of managing state lands. With our mission statement it comes down to three things for employees. First of all, I am concerned about developing leaders within state government. We take this responsibility seriously, we give folks opportunities, we train them, we want to develop the best leaders in state government. We also have fiduciary responsibilities to the beneficiaries and in addition we have a stewardship responsibility to the land. We have trust lands scattered throughout the state, a lot of Sections 16 and 36. In an overview of acres and the revenue generated in FY-05, common schools constitutes about 4.6 million acres, or about 90% of the surface acres and 5.6 million mineral acres. We used to have almost as many surface acres as mineral acres, but we have sold surface acres over the last 100+ years. The net revenue of \$57.168 million is the highest we've ever generated from state land, it also includes interest generated off the permanent fund. The total net revenue this year was in excess of \$53 million. Here is what it breaks down to: in FY-05 we had in excess of 146,000 public school children in K-12, the state's share was a little over \$3,800 per individual. The trust lands generate approximately 10% of the state's share of public

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school funding which was about \$380 per pupil. In addition to that, we also generated an excess of \$4.8 million for technology acquisition, generated from timber harvest.

We hear a lot of talk about value. What are these lands valued at, what is their highest and best use. We started taking a shot back to year 2000 we had a requirement to do an return asset report. The asset value of the land is almost \$4 billion, we estimate. We think that is a conservative estimate of the value. The cash in the permanent fund is about \$420 million, but the land value is where the real asset is for Montana.

The Agriculture and Grazing Management Bureau. We have about 4.6 million acres under lease. We have more AUMs on state trust lands than we have people in the State of Montana, a little over 1.1 million. Revenues were consistent with what they were historically: grazing about \$6.5 million, agricultural revenues which are either crop payments or crops grown about \$9.2 million. We talked about how we can improve our generation of revenue from revenue and we are looking at cash leasing as an opportunity, most of our leases currently are crop share. We had an increase in hay production from 39,000 tons to 52,000 tons between 2004 and 2005. Wheat crop went from about 4.9 million bushels to 5.1 million bushels. Our cattle price per AUM is tied directly to the price of beef in Montana. The price fluctuates annually, this year is just under \$1.00. The total rate this year is actually \$6.99 per AUM.

Forest Management Bureau. Another main activity we have is timber management. Timber land makes up about 10% of the state trust lands. We had twenty-six timber sales approved by the Board, they constituted about 54 million board feet (MMBF), we harvested about 53.5 MMBF with an additional 4 MMBF of timber permits. We have also been developing a Habitat Conservation Plan (HCP). There is a direct correlation between the price of lumber and the price we receive for stumpage. As the price of lumber goes up it ties directly to the price we receive for the timber we sell on the ground. So the timber price we received last year was just under \$250 per thousand board feet and that does not include the Forest Improvement Fee. When you add the F.I. fee we are close to \$300 per thousand board feet. Ninety-seven percent of all our forestry practices meet or exceed BMPs. We had 3% minor departures, and we had 10 major departures observed out of 3,000 practices rated. Our monitoring is a main component of our stewardship. The previous Land Board made it a very important goal for us to secure increased public access to state lands. At the time the department was not aggressively seeking access for the public. We sought management access. We are the only state that gets access for the public as a component of our acquisition program. In the past year we've gained access over 8,600 acres of state trust lands that we didn't have access to before, 5,000 acres of it is motorized access and 3,600 is non-motorized.

Mineral Management Bureau. We've had revenue-generating activity that far exceeded historical averages and we are looking to increase it by another 25% - 40% over the next year. Total revenues were over \$23 million, the bulk of it was in oil and gas. Mr. Schultz showed a slide with a couple of indicators with prices for the last year on some of these commodities. Oil prices for the entire fiscal year 2005 had the average a little under \$45 per barrel and the state share as well as the U.S. price is about the same. These prices have a direct affect on what we receive. Natural gas prices in Montana are close to \$5 - \$6 per mcf. From the revenue-generating side we enjoy the high prices, on the consumer side obviously we prefer low prices. Coal prices in Montana hovered just under \$10 per ton. At the energy summit hosted by the Governor one of the things we looked at was what is the value of the coal we have in the ground. If you look \$10 per ton is what the coal is typically worth. We've got a \$5 billion asset in coal at that price. When you look at some of the other potential value-added processes, coal gasification and coal liquefaction, we're talking in the range of about \$150 per ton. You can see the value-added is significant if we can actually do some of the ideas the Governor is promoting on the ground. Coalbed methane has

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been a controversial topic. The Board approved forty wells this past year, we are currently generating about \$140,000 per month from coalbed methane. We have 1,000 acres in production. Otter Creek is south and east of Billings. We have over 7,000 acres we received from the federal government, checkerboard ownership with Great Northern Properties. We completed a cultural survey of the area, we have completed coal drill hole coring data and we are also doing an analysis of GNP to look at the data to see what the revenue potential is out there given the quality of the coal, accessibility, and looking at markets. We are exploring the options of whether we are going to look at gasification or coal liquefaction. There is a lot of potential in the Otter Creek area.

Mr. Morrison said on Otter Creek, are there existing issues affecting development that are tied up with the federal energy bill?

Mr. Schultz said I am not aware of anything.

Mr. Morrison said I know there was an issue having to do with expanding the capacity of the transmission corridor.

Governor Schweitzer said there are several. There are loan guarantees for building gasification and liquefaction, there is federal eminent domain for transmission lines above ground in much the same way they are with pipelines. Those are a couple of key components in the energy bill. There is a fifty cent per gallon subsidy for those that would make diesel out of coal. For Montana those are important components.

Real Estate Management Bureau. This is one program that in the last three years we've seen a 100% increase in the revenue generated from our real estate program. Rights-of-ways, land sales, residential leasing, and commercial leasing. Our biggest producer is rights-of-ways. We have acquired access for the state which far exceeds the access we have granted out. Typically, we receive about 75% of the access and we give out about 25%. Residential leases, cabin sites are leased annually, Spring Prairie (Section 36) is in Kalispell and has a few commercial businesses located on it. There will be a new Fire Station and the high school is under construction. We are looking at a by-pass going through that and we will get an easement for about \$5-6 million to by-pass that piece of ground. We have hired planners on staff to help us envision the property and what potential it does have. We have a discussion on land banking to look at residential development on that piece also. We have had a lot of discussion about alternative energy and we've been a leader in state lands working with the administration on this issue. The Judith Gap Wind Farm was dedicated in October 7, 2005, we have 90 towers, thirteen of those towers are on state land. We look at future revenue at about \$50,000 annually depending on how much wind power is produced. There is another wind farm we are currently working on in Valley County. The project plan is for up to 334 towers with forty-three towers on state land. The project has four phases to be completed by 2026. The projected future revenue from this project will be \$175,000 annually depending upon power production. This is a joint project with the BLM. We are looking forward to the next generation of energy development on state lands and wind power does play an important part in that.

Mr. Johnson said how much ground do the windmills take out of production?

Mr. Schultz said the footprint is less than an acre and you can still graze around them.

Mike Sullivan, DNRC Real Estate Management Bureau, said the actual pad itself is eleven feet in diameter at the base.

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Governor Schweitzer said cattle can graze almost all the way around the base and you put four or five per acre.

Mr. Schultz said in terms of wind power in the state these two locations are a good rating in wind power, it's a Class IV. There are some sites in Montana, Livingston is one, that have a superb Class I rating. In terms of opportunity we have over five million acres with wind potential. Even though it is a Class IV rating, there are micro sites that allow for increased wind that comes up and is sustainable.

Finally we have our award winners here today. They are Bob Sandman, Greg Poncin, Steve Lorch, Candace Durran, Mike McMahon, Bill Baumgartner, and David Groeschl. We'd like to have them present the Superintendent with the check this year and we'd like the school children from Ovando to come up also.

A check in the amount of \$57,168,234.00 was presented to Linda McCulloch, Superintendent of Public Instruction.

1205-14 KIDSPORT

Ms. Sexton said on our Section 36 in Kalispell there is a complex that Kidsports has leased from us. They are a non-profit group and have been working with the City of Kalispell as well. Currently, they lease about 135 acres from us for about \$40,000 per year and are interested in a permanent easement. They have been negotiating with us on this and we are in continued discussion. They have asked for some consideration for their lease hold interest, in other words they would like to relinquish the lease and for the value of that lease reduce the value of the property. At this point in time I have told them that giving them a lease hold interest in state trust lands is not something we are at liberty to do. We are looking at probably a negotiation with them for residential value with the exception of the 15 acres that is highway frontage which has commercial value. At this point, we are between \$4.7 and \$4.9 million. In talking to the City of Kalispell and encouraging them to look at revenue possibilities such as an open space bond or land and water conservation funding. Much like the easement on the high school we are not at liberty because it is for schools, to give them a special deal. Other communities are looking at this and it would be for a public park more or less, the City of Kalispell would hold the easement similar to what we might be doing in Whitefish. We hope to bring an item to the Board at the next meeting but at this point its between \$4.7 and \$4.9.

Dan Johns, volunteer from Kidsports, said the lease is between the state and the City of Kalispell. Kidsports is a non-profit Montana corporation, a 501C3. We are the liaison between all the user groups at that complex and the City of Kalispell. I have worked closely with the department and what we're looking at doing is trying to take this 40-year lease and put it into a permanent easement. We are having discussions with the state and are having disagreement about how to value this property. The goal is to bring a proposal to the Board that has both parties interest at heart. We are trying to keep kids from going to treatment centers, we have 2,500 youth in that valley who participate in this complex on a regular basis, and we've drawn in more than double that throughout the State of Montana. The questions we are running into as far as valuation is what is the value of property subject to a restrictive easement. The other issue is we're looking at exchanging some land, releasing it from the lease that is on the highway that borders the DNRC office to the south. It has significant potential commercial development value especially when tied to the DNRC office which they are contemplating moving. We are thinking by returning that to the state at this point instead of waiting 30 years when the state can receive that benefit that that should receive some recognition when we come to value. DNRC has spoken with us about placing residential values on the property. We think it is too high and we are still going to engage in

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discussion with the department about that. When this property was leased it was half used ag land that was generating crop share dollars for the state of around \$12,000 - \$15,000 per year. We were the first non-ag user to step up to the plate and are generating \$40,000 from this athletic facility. The money that comes from that each year is generated by the kids. What we're doing is providing facilities that allow the schools to not have to build some of these facilities as well as providing these additional programs that go throughout the remainder of the year. When this land came into the city there were trade offs that were made, the entire section was annexed except for a 20-acre parcel that was formerly a feedlot. It went through a neighborhood planning process. This piece is zoned P-1, parkland (a public park), and we would like a permanent easement for a park to continue that. Also when the state came in there were concessions made about in the future all development and new leases in this section since it is a part of the city and was receiving city services, will be subject to city zoning. There really isn't any incentive to do anything other than keep it as P-1. We have \$2.4 million invested in that project, not counting the volunteer hours and effort that exists. With Kidsports nobody gets paid anything, everybody working on behalf of that organization is totally voluntary and we don't plan on changing that. We will be having further discussions with the department.

Jim Patrick, Kalispell, said our desire is to find a win-win solution. In forty years when the lease is up, what do we do? If we are using this facility at the average of 2,500 participants per year not counting the out-of-state people, what are we going to do in forty years? Our desire is to come up with a win-win solution that benefits the school land trust, we receive value both from the commercial property, the additional revenue then going to offset some of the costs of the land that we hold in a lease. We look forward to working with the Board and the department to come to a resolution.

Charles Harball, City Attorney for Kalispell, said I would like to give thanks to your staff when they put together Section 36, it was a marvelous job with vision and foresight. They didn't have to work with the city or Kidsports to put this in place, they had a vision for open space, a vision for something into the future. The state and the city needed to work together on this so in the late 1990's they did work together. The state needed city municipal services and the city provided that to them, the one caveat the city needed was waiver of the agency exemption and the state did that. The city had zoning and land use authority and reliance upon that. Kidsports has invested and continues to invest a substantial amount of money in infrastructure. This is a jewel in Northwest Montana. The city wants to continue to work with the state, we see an opportunity here that the trust can garner more funds for the trust, Kidsports can maintain this long into the future.

1205-1 FWP PRESENTATION: STATE PARKS OVERVIEW BY DOUG MONGER

Doug Monger, FWP Administrator Parks Division, said for five more days I am the administrator of the Parks Division and this is one last chance to say thank you to the Board for all its support for state parks and FWP through the years and also to give you a quick overview of my view of the state of the state park system. The good news is it is good news today with one notable exception. FWP has always followed the ebb and flow of the Montana economy. In 1929 when State Parks was first created, they got no money. It was seven years before any money was appropriated to the system. In 1965 State Parks moved from the Highway Department to the Department of Fish and Game. The reason they moved was Congress had just created the Land and Water Conservation Fund and State Parks had \$3.4 million new dollars and Fish and Game thought we could be a pretty good partner. But that ebb and flow has continued. Through the 1970s with the oil and coal booms in Montana, State Parks did well. Through the 1980s it was a little different times, we were suffering from a state economy standpoint and we actually laid off a number of employees and cut our parks from sixty to forty-two. It was the late 1980s when we instituted our first "day use" fee. In the 1990s it was a mixed bag for the economy and State

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Parks as well. The one exception to the ebb and flow of the economy and state parks was in 2003 when the legislature created the \$4.00 optional fee on license plates to fund state parks. They did that in a climate when the state as a whole was \$200 million in the hole and were facing deficits. The one good thing was legislators could come home from that session and say we made state parks free to Montanans and we did that by taking a chance that Montanans would support a state park system through a check off effectively on license plates. There is a \$4.00 fee on license plates that goes to state parks unless the payor decides he doesn't use state parks and opts out. Today, well over 75% of the population is supporting state parks through that \$4.00 fee. That leads me into what is probably the greatest strength of the state parks system today. We have financial stability. We haven't had that for the thirty years I have been involved with state parks and I am glad to be leaving a system that today has financial stability. One of the other greatest strengths is we are a fairly efficient machine. We have done so much for so little for so long but our folks are doing a really good job. We have a highly motivated, skilled, and professional staff, the smallest in the nation, that is doing a very good work to provide for our 1.6 million guests each year. Our greatest strengths today are our people, our efficiency and the resources we continue to manage in the fifty state parks we have. Not surprisingly some of the weaknesses we are faced in the state park system is a lack of staff. Those staff can't respond to all of the demands put on them, put on the resources.

One of the other weaknesses we have today is the backlog of need that has built up since 1929 and that we've got about a \$30 million backlog of maintenance and construction needs. We are whittling away at that. In 1989 it was \$60 million backlog. I am going to help get rid of a \$15 million backlog by turning Canyon Ferry back to the federal government. With this license plate fee in the next ten to fifteen years we will have made some real progress there. Another weakness we see in the state park system is an inability to be able to respond to public desires and demands. Part of that is financial but part is also legislation. There is some legislation for the permitted parks, statutes, and others that constrain how FWP and how the state park system can respond to the desires and demands of the public. The biggest threat the state park system is facing today is its financial stability. It is a fine line even with the new funding, being able to hold onto the funds and direct them to the state park system. There is constant demand within our state government for additional services. Since we've gotten that funding I have been to Billings and talked with the Zoo Montana people, we've talked to dinosaur people who want to create a new museums or additions to their museums all on the backs of that \$4.00 fee that folks are voluntarily giving to the state park system.

From outside the agency the biggest threat is the financial stability. We need to be true to the state park system and ensure that funding goes there. On an individual basis, many of our state parks are also having to address threats: coalbed methane, the Rosebud Battlefield down by Decker, subdivision development in the Kalispell area at Lone Pine, and the increased building along Flathead Lake. There is constant piecemeal of some of our properties. State parks are not unlike those starter mansions that everybody wants more property.

The neatest thing about being in front of the Board today is being able to discuss briefly the opportunities we have before us. Unfortunately, I am leaving before we can fulfill these opportunities. A project we have recently started, the first in the nation, is a joint venture with the University of Montana, DNRC, and state parks to create what we've termed "Grizzly Alumni State Park". A venture funded by the Alumni Association creating a new state park on Flathead Lake that happens to be on DNRC property, operated as part of the state park system. When its not full with alumni or students as a teaching center, it would be made available to the general public for camping and recreating opportunities. I've always had a dream in Eastern Montana of creating a Serengeti-type park. A parcel large enough to display to our visitors what Eastern Montana is really about, a wildlife sanctuary where recreators and agricultural interests can co-

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exist. The last opportunity is what was deemed "the Corridor of Discovery" during the last legislature. If Burlington Northern should abandon the railway line between Helena and Great Falls and if it is not economically viable to operate a railroad, then the State of Montana can't afford to lose the right-of-way like it did the Milwaukee. If there is anything we can do through the state park system or the Land Board to preserve the right-of-way, and maybe use it as a trail opportunity, that would be good. I think the state is going to see that again. During the legislature that proposal was headed towards DNRC and Director Sexton and I had conversations about if it is more appropriate in the State Park system, I think it is. If a railroad isn't economically viable, hopefully a trail will be. A few other opportunities that will be in front of the Board will be some of the in holdings we have in state parks, Smith River, Traveler's Rest, the entrance to Bannock, and the south half of Brush Lake. I hope in the next year or so you will see more proposals to complete those parks as well. Rest assured, from my viewpoint the state parks are in good hands. FWP and each individual employee is doing a good job trying to balance resource protection with visitor use, balance the needs of Montanans with the needs that State Parks fulfill for the tourism industry of supporting our 10 million guests that come to Montana. And balancing the maintenance of our state parks with additional construction and new attractions.

PUBLIC COMMENT

Jack Atchison, Butte representing Public Land and Water and Sportsmen Clubs, said we are the people who sued the state some years ago to open up 5.2 million acres of public land and I would like to say first off, Homeland Security has somehow given to the Fish and Game Department and the livestock industry \$10 million and it all revolves around bison and public lands. I would like also to say I am interested in the laws and I would like the Board to remember we sued the Department of State Lands with Ravalli County and the Supreme Court determined there the objective of state land is first to follow all laws, federal and state. Raising money is next. That is the Supreme Court decision. Our concern over public land and the gifting laws are well known to DNRC and DSL. DSL has enjoyed 100 years of creativity to circumvent the law, but what DSL indicates and what they actually do can vary. At this time, the US Court of Appeals holds our pending appeal over astounding conflict over two similar BLM Environmental Assessments. Either of the decisions by the US Court of Appeals will support our claim against the DNRC. The amended Unlawful Enclosures Act is what I am referring to which applies primarily to private land and state land. It's a federal law that applies to state land. The most recent court decision was the US Court of Appeals v. Taylor-Lawrence which upholds the Unlawful Enclosures Act and it applies to private land adjacent to federal land which is state land. The DNRC, BLM, and USFS real estate brochure is a good example of federal border laws being ignored to benefit real estate sales. Despite federal law, DNRC permitted nuisance barrier fences to be built that do not comply with the Unlawful Enclosures Act or BLM Handbook H1741I and various USFS multiple use laws. It need not be the barrier fence itself, it is the effect which violates the Unlawful Enclosures Act. The Unlawful Enclosures Act is all about private land near federal land borders. Although there are many similar borders at this time we are only going to review the Willow Creek fences dividing state land from federal land. Where does it say anywhere that domestic hybrid bison should have more consideration than wild bison, elk, deer, moose, bighorn sheep, or antelope? I want to see it somewhere. With that, there is a list of constitutional laws which backs up what I am saying that federal law supersedes state law. One final thing, whenever we sued the Department of State Land some time ago, there was 37,000 acres of state land that was mentioned in this case and I was wondering what happened to that 37,000 acres.

Ellen Engstedt, Montana Wood Products Association, said I just want to compliment the timber program one more time. The \$4.8 million going into timber technology, it is not a brick, it is cream and it is over and above what schools get for their base budget. Ovando has a budget of about \$88,000 and they are getting about \$600 in technology dollars. That is a little bit of money taxpayers won't have to pay and I

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think that is a really good idea. I would also like to take the opportunity to publicly thank the members of the Board of Land Commissioners for its approach this past year in approving timber sales on state trust lands. It was the right thing to do and my members thank you for helping to maintain a steady timber supply while properly managing Montana's trust lands. I would like to thank Director Sexton, the fine staff at DNRC, and the Land Board staffers for their great efforts. They are professional folks to deal with and its always a pleasure.

Motion was made by Mr. Morrison to adjourn. Seconded by Mr. McGrath.